

IP 02-0159-CR 1 B/F USA v Hill
Magistrate Kennard P. Foster

Signed on 10/18/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 02-159-CR-01 (B/F)
)	
KEITH DANIEL HILL,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on October 11, 2005, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on October 7, 2005, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on October 17, 2005, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Hill appeared in person with his appointed counsel, Bill Dazey, Indiana Federal Community Defender’s Office. The government appeared by James Warden, Assistant United States Attorney. U. S. Parole and Probation appeared by Jay Hardy, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Bill Dazey, of the Indiana Federal Community Defender's Office, was present and appointed by the Court to represent Mr. Hill in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release, filed October 7, 2005, was provided to Mr. Hill and his counsel who informed the Court that they had read and understood the specifications of the violations charged therein and waived further reading thereof.

3. Mr. Hill was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition to Revoke Supervised Release.

4. That Mr. Hill would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Hill had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Hill had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on October 11, 2005.

7. Mr. Dazey stated that Mr. Hill would stipulate there is a basis in fact to hold him on the violation of supervised release set forth in the Petition to Revoke Supervised Release, filed on October 7, 2005. Mr. Hill then signed a written waiver of preliminary examination.

8. Mr. Hill, by counsel, stated that he admitted the specified violations of his supervised release, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on October 7, 2005, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	“The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.”

Mr. Hill has failed to submit monthly written reports since January 2005.

2	“The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.”
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On April 19, 2005, Mr. Hill was sent a letter directing him to appear at the probation office for DNA testing. On May 12, 2005, Mr. Hill failed to appear for this appointment. On July 13, 2005, a letter was sent to Mr. Hill directing him to appear at the probation office for an appointment on August 18, 2005. Mr. Hill failed to appear for this appointment as directed by this officer. On August 23, 2005, a home visit was attempted. Mr. Hill was not present. On August 25, 2005, a letter was sent to Mr. Hill directing him to appear at the probation office for an appointment on September 1, 2005. This letter warned Mr. Hill that failure to appear for appointments is non-compliance with his conditions of supervised release. On August 30, 2005, Mr. Hill's mother was contacted by telephone and requested to convey to Mr. Hill that he appear for his scheduled appointment on September 1, 2005. On August 30, 2005, Mr. Hill left a voicemail message for this officer indicating that his phone was not working and he would call back later. No other message was ever received by this officer. On September 1, 2005, Mr. Hill failed to appear for his scheduled office appointment. On September 1, 2005, a certified letter was sent to Mr. Hill directing him to appear at the probation office on September 20, 2005. On September 6, 2005, a home visit was attempted by this officer. During the attempt noise which was believed to be a television was heard coming from inside the residence. No response was obtained and a business card was left in Mr. Hill's mailbox with instructions to contact this officer as soon as possible. On September 9, 2005, another home visit was attempted. At that time the business card from September 6 remained in the

mailbox. A neighbor indicated that they believed Mr. Hill to still live at the residence but often stayed with his mother. On September 20, 2005, Mr. Hill failed to appear for a scheduled office appointment. On September 22, 2005, the certified letter previously sent to Mr. Hill was returned to the probation officer as not being picked up.

Counsel for the parties further stipulated the following:

- 1) Mr. Hill has a relevant criminal history category of III. *See, U.S.S.G. §7B1.4(a).*
- 2) The most serious grade of violation committed by Mr. Hill constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Hill is 5-11 months.
- 4) The appropriate disposition of Mr. Hill's supervised release upon hearing before the Court is to modify his supervised release as follows:
 - i. His supervised release conditions be modified that he will report in person each month to his supervising United States Parole and Probation officer. All conditions of supervised released release previously imposed remain in full force and effect.

The Court then inquired directly of Mr. Hill while under oath whether he admitted the violations of specifications of the Petition stipulated to above. Mr. Hill admitted to the specifications of violations as set forth above. The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **MODIFIED** and Keith Daniel Hill's supervised release shall continue as previously set with the following modifications:

- (1) He shall report in person each month to his supervising United States Parole and Probation officer.
- (2) All conditions of supervised release previously impose shall remain in full force and effect.

Counsel for the parties and Mr. Hill entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure*, and/or may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation, upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation modifying Mr. Hill's supervised release.

IT IS SO RECOMMENDED this 18th day of October, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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U. S. Marshal Service